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Special Litigation Counsel for USACM Liquidating Trust

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Counsel for USACM Liquidating Trust

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:
USA COMMERCIAL MORTGAGE COMPANY,

Debtor.

In re:
USA CAPITAL REALTY ADVISORS, LLC,

Debtor.

In re:
USA CAPITAL DIVERSIFIED TRUST DEED
FUND, LLC,

Debtor.

In re:
USA CAPITAL FIRST TRUST DEED FUND,
LLC,

Debtor.

In re:
USA SECURITIES, LLC,

Debtor.

Affects:
☐ All Debtors
☒ USA Commercial Mortgage Company
☐ USA Capital Realty Advisors, LLC
☐ USA Capital Diversified Trust Deed Fund, LLC
☐ USA Capital First Trust Deed Fund, LLC
☐ USA Securities, LLC

Case Nos.:
BK-S-06-10725-LBR
BK-S-06-10726-LBR
BK-S-06-10727-LBR
BK-S-06-10728-LBR
BK-S-06-10729-LBR

JOINTLY ADMINISTERED
Chapter 11 Cases

Judge Linda B. Riegle Presiding

**NOTICE OF FILING PROOF OF
SERVICE OF SUBPOENA FOR
RULE 2004 EXAMINATION**

NOTICE IS GIVEN that the USACM Liquidating Trust herewith files the:

**Proof of Service of Subpoena for Rule 2004 Examination
on Nathan S. Sherrill (Exhibit A Attached).**

1 DATED: January 16, 2008

2 **DIAMOND MCCARTHY LLP**

LEWIS AND ROCA LLP

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4
5 By: /s/ Eric D. Madden
Allan B. Diamond, TX 05801800 (pro hac vice)
6 Eric D. Madden, TX 24013079 (pro hac vice)
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10 *Special Litigation Counsel for*
11 *USACM Liquidating Trust*

Counsel for USACM Liquidating Trust

83180.1

United States Bankruptcy Court

DISTRICT OF ARIZONA

IN RE

USA COMMERCIAL MORTGAGE COMPANY,
 USA CAPITAL REALTY ADVISORS, LLC,
 USA CAPITAL DIVERSIFIED TRUST DEED FUND LLC,
 USA CAPITAL FIRST TRUST DEED FUND LLC,
 USA SECURITIES, LLC,

DEBTORS.

AFFECTS: ALL DEBTORS

TO: NATHAN S. SHERRILL
 8207 E. COLUMBUS AVE.
 TEMPE, AZ 85281

SUBPOENA FOR RULE 2004 EXAMINATION

CASE NOS. BK-S-06-10725 LBR
BK-S-06-10726 LBR
BK-S-06-10727 LBR
BK-S-06-10728 LBR
BK-S-06-10729 LBR

JOINTLY ADMINISTERED UNDER
 CASE NO. BK-S-06-10725-LBR
 IN THE DISTRICT OF NEVADA

X YOU ARE COMMANDED to appear for examination under Federal Rule of Bankruptcy Procedure 2004, at the place, date and time specified below. The USACM Liquidating Trust reserves the right to videotape all examinations.

PLACE OF TESTIMONY

LEWIS AND ROCA LLP
 40 N. CENTRAL AVENUE, SUITE 1900
 PHOENIX, AZ 85004

DATE AND TIME

January 31, 2008 at 10:00 a.m. (or
 such other mutually agreeable date
 and time)

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:

SEE ATTACHED EXHIBIT A FOR DOCUMENTS REQUESTED

PLACE

LEWIS AND ROCA LLP
 40 N. CENTRAL AVENUE, SUITE 1900
 PHOENIX, AZ 85004

DATE

January 25, 2008 at 10:00 a.m. (or
 such other mutually agreeable date
 and time)

ISSUING OFFICER SIGNATURE AND TITLE

Special Litigation Counsel for the USACM Liquidating Trust

DATE

January 10, 2007

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

J. MAX BEATTY
 DIAMOND MCCARTHY, LLP
 909 FANNIN, SUITE 1500
 HOUSTON, TX 77010
 (713) 333-5100

EXHIBIT

tabbies

A

PROOF OF SERVICE

DATE: 1-10-08

PLACE:

8207 E. Columbus Ave.
@ 523 P.M. Scottsdale, AZ 85251**SERVED:**

SERVED ON (PRINT NAME)

Nathan Sherrill

MANNER OF SERVICE

Personal

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

1-10-2008

Date

Signature of Server

Chonaje Lee

 Arizona Quick Serve
 9393 N. 90th St. Ste 121
 Scottsdale, AZ 85258

Address of Server

Rule 45, Federal Rules of Civil Procedure, Parts (c) & (d) made applicable in cases under the Bankruptcy Code by Rule 9016, Fed.R.Bankr.P.:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and reasonable attorney's fees.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order by the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any persons who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

- (i) fails to allow reasonable time for compliance.
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held or,

- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.